Arizona v. Youngblood

488 U.S. 51 (1988)

Arizona v. Youngblood

488 U.S. 51 (1988)

- 5 year old boy sexually assaulted; his clothing w/assailant's semen was collected but not stored in refrigerator—later tests were inconclusive
- Defense claimed failure to preserve the evidence violated Due Process because it might have proved that he was not the assailant.

Arizona v. Youngblood

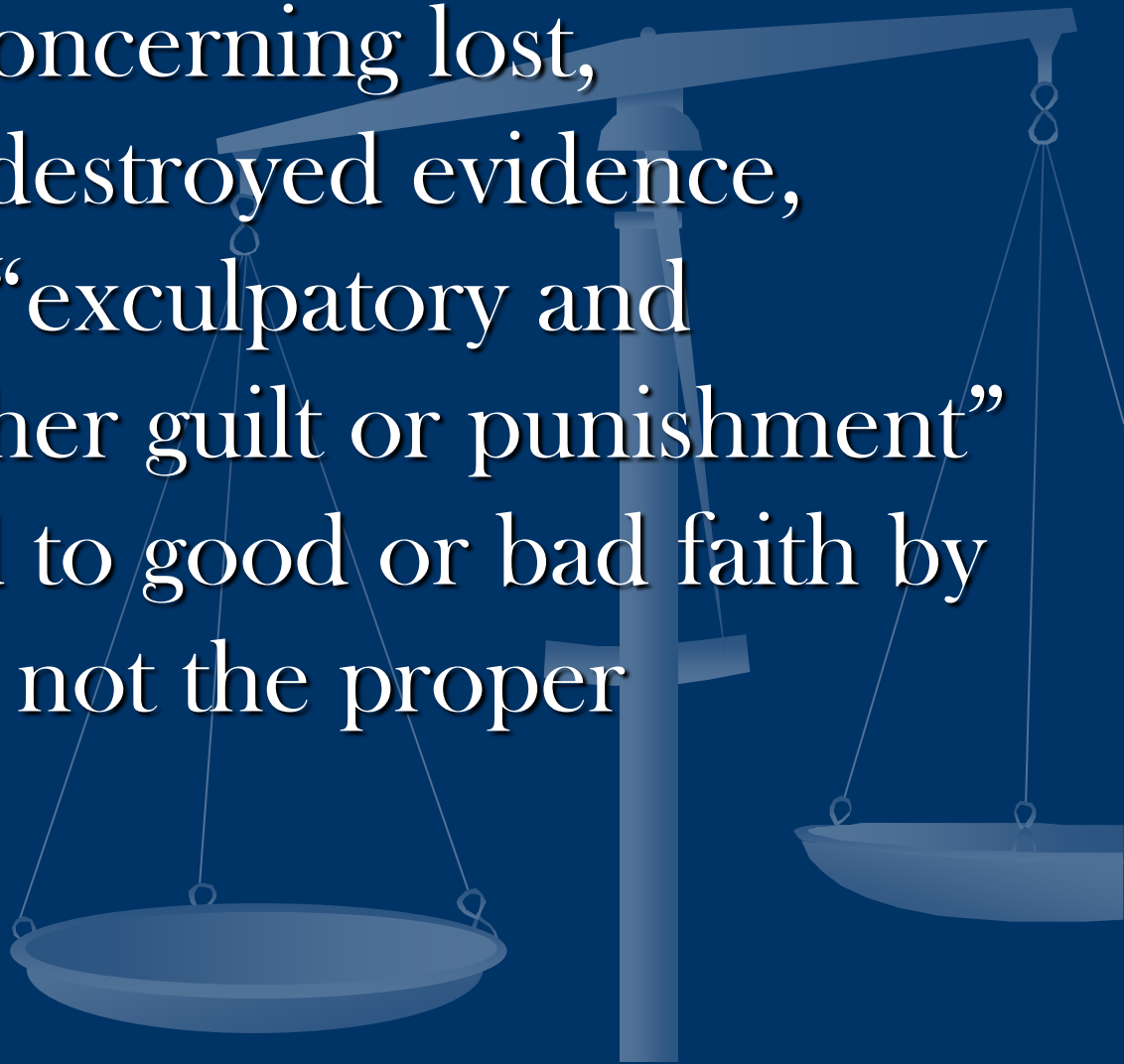
- "The Due Process Clause of the Fourteenth Amendment, as interpreted in Brady, makes the good or bad faith of the State irrelevant when the State fails to disclose to the defendant material exculpatory evidence. But we think the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant."

Arizona v. Youngblood

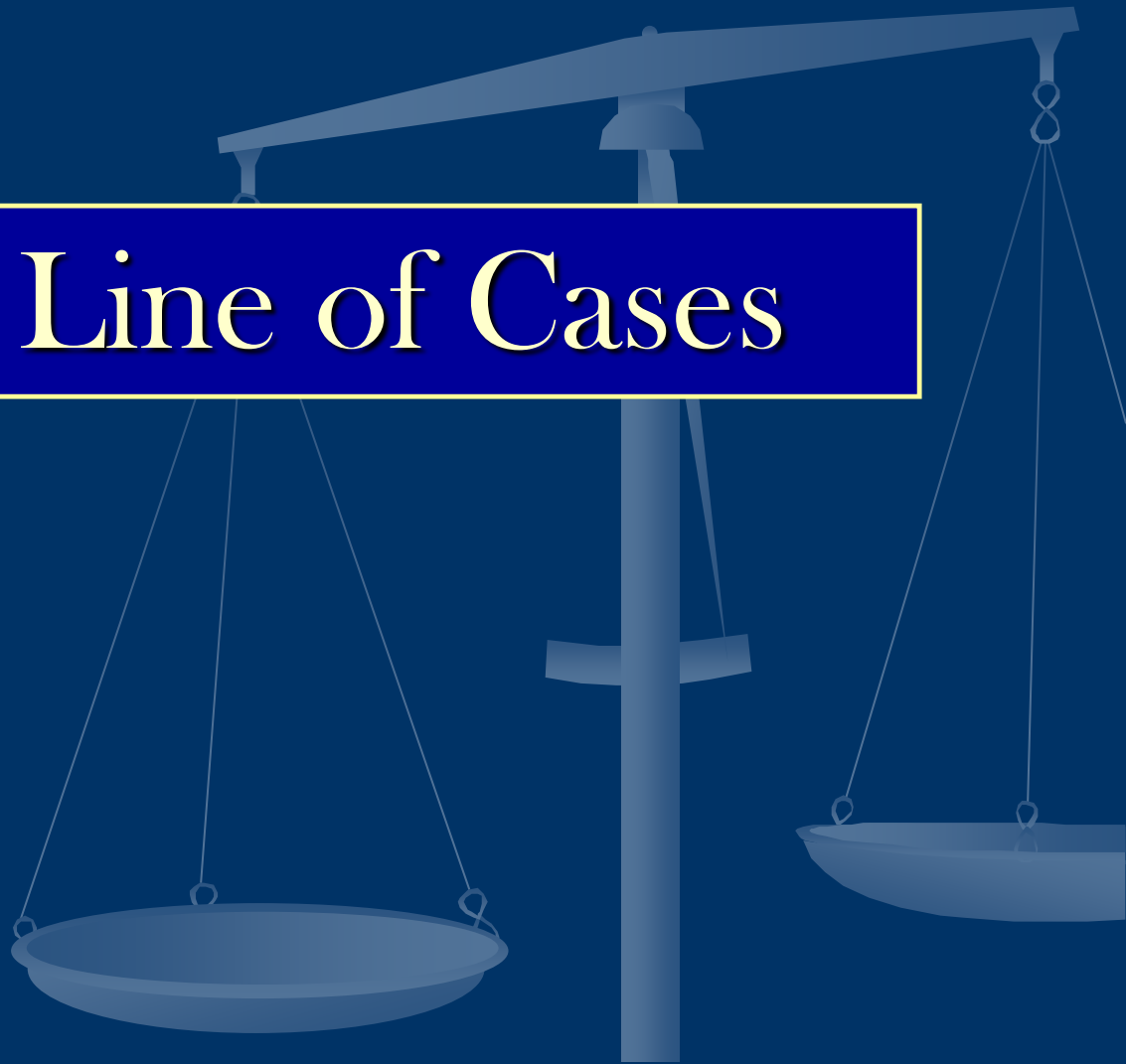
- "We therefore hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law."
- "In this case, the police collected the rectal swab and clothing on the night of the crime; respondent was not taken into custody until six weeks later. The failure of the police to refrigerate the clothing and to perform tests on the semen samples can at worst be described as negligent. None of this information was concealed from respondent at trial, and the evidence—such as it was—was made available to respondent's expert who declined to perform any tests on the samples."

Arizona v. Youngblood

- On motions concerning lost, discarded, or destroyed evidence, *Brady* and its "exculpatory and material to either guilt or punishment" without regard to good or bad faith by government is not the proper standard

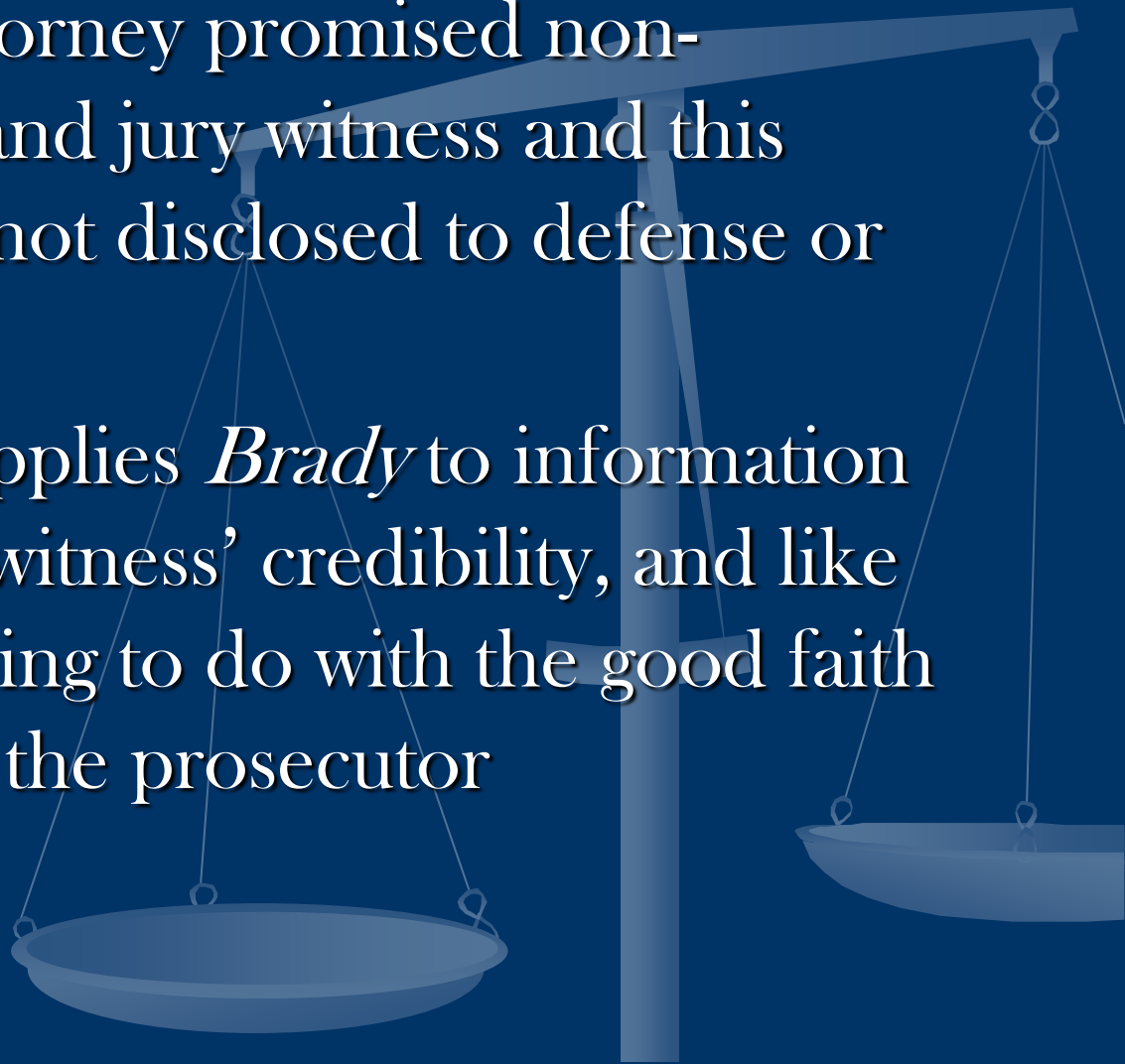


Giglio Line of Cases



Giglio v. United States,
405 U.S. 150 (1972)

- Assistant U.S. Attorney promised non-prosecution to grand jury witness and this arrangement was not disclosed to defense or jury
- Supreme Court applies *Brady* to information which may affect witness' credibility, and like *Brady*, it has nothing to do with the good faith or lack thereof of the prosecutor



Giglio v. United States,
405 U.S. 150 (1972)

- AUSA who made promise was different than one who tried the case
- Grand Jury AUSA: affidavit—I promised leniency for testimony
- Trial AUSA: Grand Jury AUSA assured me prior to trial he made no promises of immunity or leniency
- USA: I personally told defendant no testimony: prosecution. Testimony: I'll think about it

[N]either DiPaola's authority nor his failure to inform his superiors or his associates is controlling. Moreover, whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor. The prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes, to the Government. . . .To the extent this places a burden on the large prosecution offices, procedures and regulations can be established to carry that burden and to insure communication of all relevant information on each case to every lawyer who deals with it.

Giglio v. United States,
405 U.S. 150 (1972)

- "*Brady v. Maryland* held that suppression of material evidence justifies a new trial "irrespective of the good faith or bad faith of the prosecution." When the "reliability of a given witness may well be determinative of guilt or innocence," nondisclosure of evidence affecting credibility falls within this general rule."

Good v. Bad Faith

- *Brady* and *Giglio* do not hinge on good or bad faith of police or prosecutors
- Distinguish: *Arizona v. Youngbloood*, 488 U.S. 51 (1988)
  - Failure to preserve evidence which might have been useful to defense not reversible unless bad faith is shown, and then only if it is material and potentially exculpatory.

And If You're Really Into the Minutia of This Stuff

- Giglio standard of materiality is lower, more defense friendly, than that of Brady
- Giglio: [T]he falsehood is deemed to be material "if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury."
- Brady: nondisclosed evidence is material: 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'

Giglio and Agreements to Agree, or Tacit Agreements

- "Like the majority of our sister circuits, we conclude that *Brady* requires disclosure of tacit agreements between the prosecutor and a witness. A deal is a deal-explicit or tacit."

Douglas v. Workman, 560 F.3d 1156, 1186 (10th Cir. 2009)(collecting cases).

Giglio and Agreements to Agree, or Tacit Agreements

- "The threat of incorrect jury verdicts is further increased by tacit agreements because, when testifying, a witness whose agreement is tacit, rather than explicit, can state that he has not received any promises or benefits in exchange for his testimony.... Likewise the prosecutor can argue to the jury that the witness is testifying disinterestedly,16 which artificially increases the witness's credibility-artificially, that is, because the premise of the argument is false."

Giglio and Agreements to Agree, or Tacit Agreements

- Mere hope by the defendant of leniency is not equivalent to an agreement or promise
  - "The fact that Davenport desired favorable treatment in return for his testimony in Bell's case does not, standing alone, demonstrate the existence of an implied agreement with Miller. A witness's expectation of a future benefit is not determinative of the question of whether a tacit agreement subject to disclosure existed." *Bell v. Bell*, 512 F.3d 223, 233 (6th Cir. 2008).

Giglio and Agreements to Agree, or Tacit Agreements

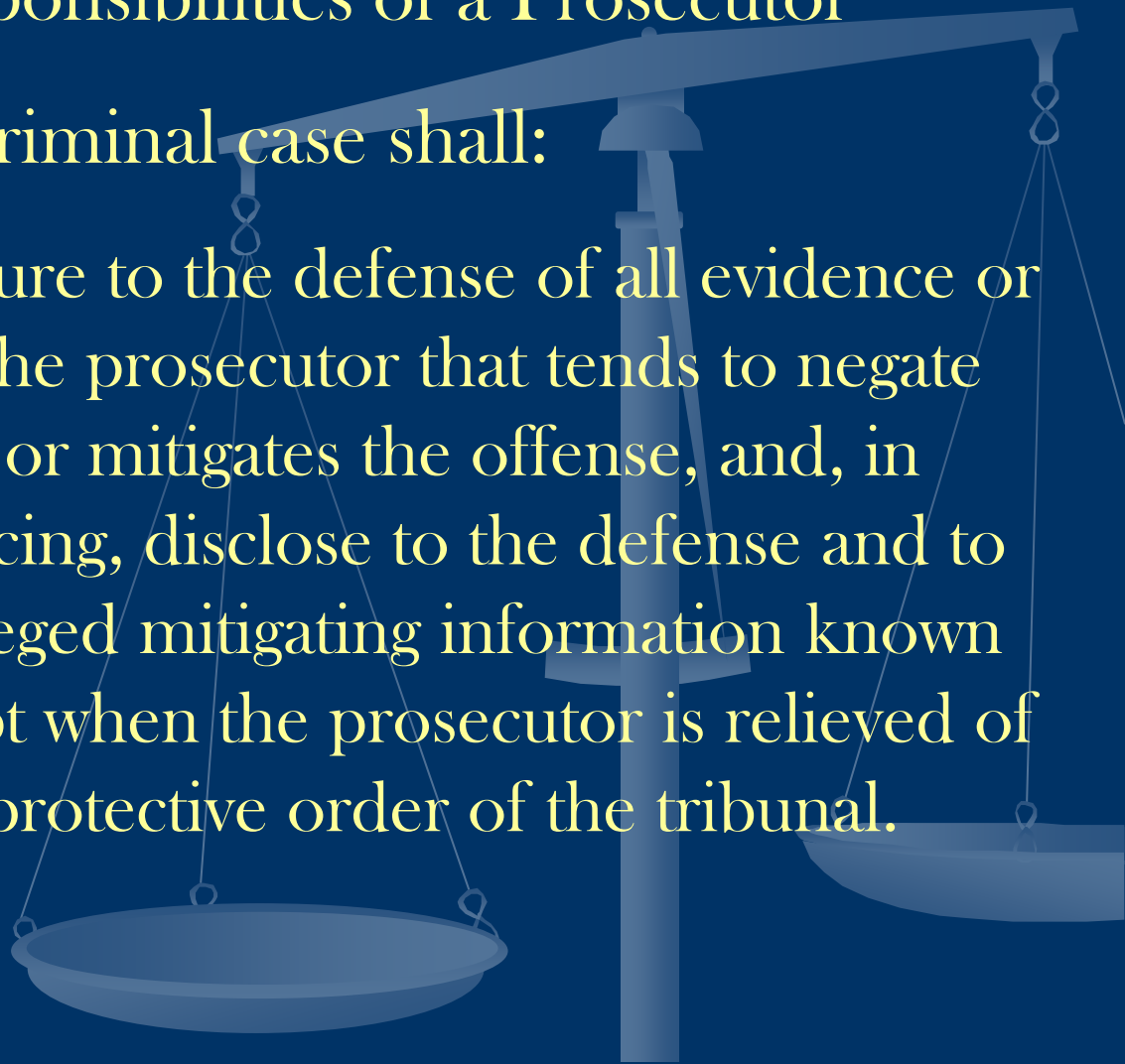
- "[I]t is not the case that, if the government chooses to provide assistance to a witness following a trial, a court must necessarily infer a preexisting deal subject to disclosure under Brady." *Douglas v. Workman*, 560 F.3d 1156, 1186 (10th Cir. 2009), *quoting Bell* above.
- Page 8 of your outline for complete discussion

Ethics Consideration

Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.



Some Recent SCOTUS Cases on *Brady*

Turner v. United States,

137 S. Ct. 1885, 1893 (2017)

COLD

The Washington Times

TUESDAY, DECEMBER 17, 1985* WASHINGTON, D.C. 25 cents

6 guilty, 2 cleared of Fuller murder; jury still out on 2

By Michael Hedges
THE WASHINGTON TIMES

A D.C. Superior Court jury yesterday found six defendants guilty and two not guilty in the murder of Catherine Fuller after a 46-day trial that legal experts have called the most unusual in District history.

The six found guilty are Levy Rouse, 20; Timothy Catlett, 20; Kelvin Smith, 20; Charles Turner, 21; Steven Webb, 20, and Clifton Yarborough, 17.

The two acquitted are Alphonso Harris, 23, and Felicia Ruffin, 17.

Jurors are still deliberating the fate of Christopher Turner, 19, and Russell Overton, 20.

The 10 had been charged with what police have called one of the city's most brutal murders.

The defendants, some of whom appeared calm throughout the trial, sat grimly for several minutes awaiting the verdict. When foreman Robert Lucas pronounced "guilty" to all counts for Catlett, the first defendant judged, Catlett jerked himself back in his chair and sank his head into his hands.

While Catlett was absorbing his verdict, Harris found he had been judged not guilty. He beamed broadly at his attorney, Michelle Roberts. Ms. Roberts grabbed him by the arms and shed tears of happiness.

Rouse, accused of brutally assaulting Mrs. Fuller with an iron bar, displayed no emotion as he was found guilty of two counts of first-degree murder, kidnapping and armed robbery. Defendants Webb, Yarborough, Turner and Smith were also convicted of two counts of first-degree murder, robbery and kidnapping.

All are scheduled to be sentenced in late January and early February. They face sentences of up to life in prison. The earliest parole hearing date possible, if they receive the lightest possible sentence, would be in 20 years.

Miss Ruffin grinned broadly at her grandmother Mary Ruffin even before her "not guilty" verdict was read. Her grandmother, who had wrung her hands nervously while awaiting the decision, murmured "thank you Jesus, thank you Jesus," as the verdict was read.

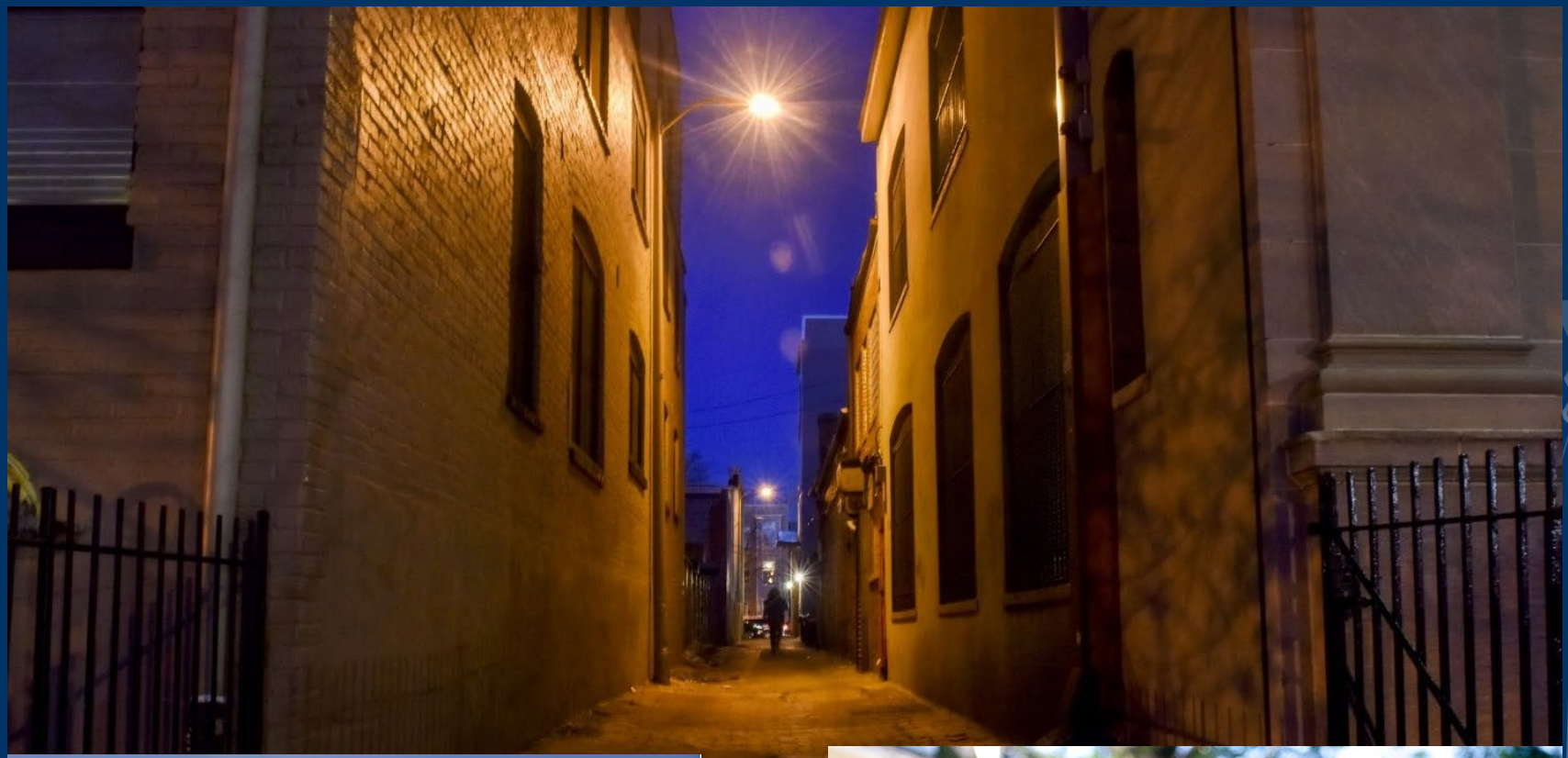
Two defendants, Mr. Overton and Mr. Turner, appeared confused when their names were skipped by Judge Robert Scott as he read the roll of defendants.

see TRIAL, page 8A

Turner v. United States,

137 S. Ct. 1885, 1893 (2017)

- Fuller beaten, sodomized and murdered in alley
- Theory of case was that crime committed by over a dozen participants
- After trial, reporter discovers withheld evidence, including:
  - Ammie Davis – heroin addict who said it was James Blue
  - Eyewitness who said he saw two suspicious men around the area and run when police arrived – later identified one of the men as James McMillan
  - Eyewitness who claimed to have been in the alley near in time to the crime and heard woman moaning inside a garage where Fuller was later found



Turner v. United States,

137 S. Ct. 1885, 1893 (2017)

- Some of the Government's evidence:
  - Two co-defendant's pled guilty and testified against the group (recanted years later);
  - One 14 yr old boy identified Turner and others from the crime;
  - One additional eyewitness, who was determined to have been under influence of PCP saw defendants commit crime;

Turner v. United States,

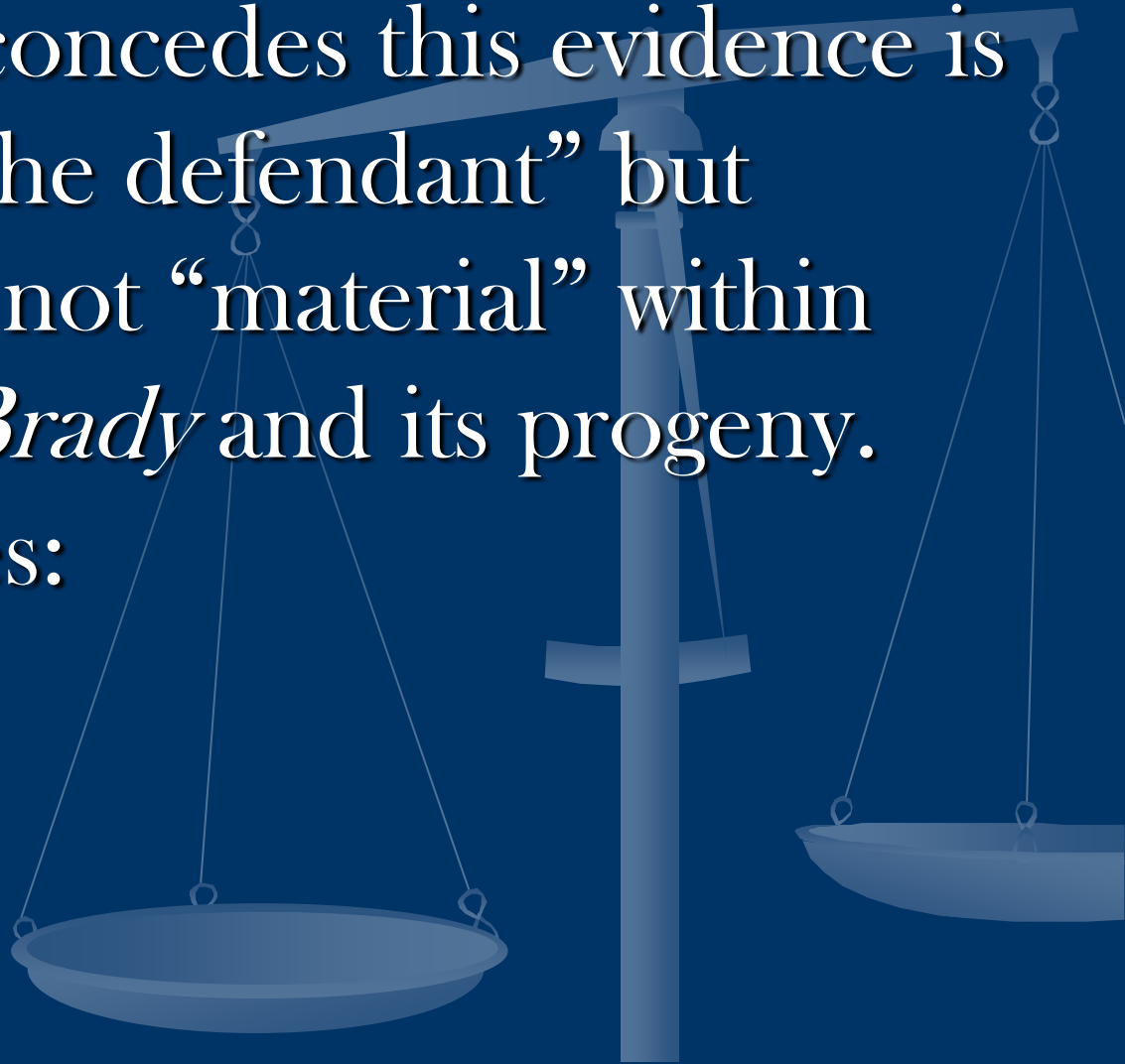
137 S. Ct. 1885, 1893 (2017)

- Majority rejects challenge that *Brady v. Maryland* requires reversal of defendants convicted of group sexual assault and murder of a woman in Washington, D.C. in 1984.
- Identity of a two men seen in the alley where victim was found, and statement of a man who said he heard moans coming from the garage where she was found were <u>not</u> disclosed.

Turner v. United States,

137 S. Ct. 1885, 1893 (2017)

- Government concedes this evidence is "favorable to the defendant" but maintains it is not "material" within the ambit of *Brady* and its progeny. Majority agrees:



Turner v. United States,

137 S. Ct. 1885, 1893 (2017)

- "Considering the withheld evidence "in the context of the entire record," however, *Agurs*, supra, at 112, we conclude that it is too little, too weak, or too distant from the main evidentiary points to meet *Brady's* standards. As petitioners recognize, McMillan's guilt *(or that of any other single, or near single, perpetrator)* is inconsistent with petitioners' guilt only if there was no group attack. But a group attack was the very cornerstone of the Government's case. The witnesses may have differed on minor details, but virtually every witness to the crime itself agreed as to a main theme: that Fuller was killed by a large group of perpetrators. "